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UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

OFELIA COLOYAN,

 Plaintiff,
 vs.

WILLIAM BADUA,
 JEFFERY OMAI,
 SPENCER ANDERSON,
 NEIL PANG,
 and DOES 5-10;

 Defendants.

) CIV. NO. 03-476 KSC
)
)
)
) PLAINTIFF'S RESPONSE TO
) DEFENDANTS WILLIAM P.
) BADUA, SPENCER ANDERSON
) AND JEFFREY OMAI'S MOTION
) IN LIMINE **NO. 2** RE: PRECLUDING
) TESTIMONY OF LEE DONOHUE
) AND/OR TESTIMONY REGARDING
) CODE OF SILENCE; DECLARATION
) OF JACK SCHWEIGERT, ESQ.;
) EXHIBITS 1-3; CERTIFICATE OF
) SERVICE
)
) Date: March 13, 2006
) Time: 1:30 p.m.
) Judge: Kevin S.C. Chang
)
) Trial week: March 14, 2006

FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

FEB 28 2006

at 3 o'clock and 12 min M
 SUE BEITIA, CLERK

PLAINTIFF'S RESPONSE TO DEFENDANTS WILLIAM P. BADUA, SPENCER
ANDERSON AND JEFFREY OMAI'S MOTION IN LIMINE NO. 2 RE:
PRECLUDING TESTIMONY OF LEE DONOHUE AND/OR TESTIMONY
REGARDING CODE OF SILENCE

Defendants seek to preclude the testimony of Retired Honolulu Police Chief Lee Donohue and/or any testimony regarding a "code of silence" in the Honolulu Police Department. This would be wrong to do.

The Defendants base their motion on the following:

- * Plaintiff never raised the issue of a "code of silence" prior to filing her First Supplement to Pretrial Statement (Memo @ 2)
- * Plaintiff never questioned any of the witnesses regarding a "code of silence." (Memo @ 2)
- * To date, there is no evidence or indication of an alleged "code of silence" in this matter. (Memo @ 2 & 3)

Based on this, Defendants contend:

- * The "code of silence" is inadmissible under Fed.R.Evid. 403 as irrelevant. (Memo @ 2)
- * The "code of silence" is inadmissible as a waste time, speculation, confusion, and would mislead the jury and prejudice Defendants. (Memo @ 3)

Defendants are incorrect for the "code of silence" is a well-documented phenomena by police. (Exhibit 1) Generally, it encompasses the refusal of a police officer to turn in a fellow officer or report his wrongdoing, even though the officer has knowledge of wrongdoing or misconduct. (Exhibit 1)

As retired Honolulu Police Department (HPD) Chief Donohue explains, the "code of silence" (which exists in HPD) causes police officers to cover up or not report the wrongdoings of fellow officers. (Exhibit 2)

Even the Defendant's own expert, Byron Eliashof, M.D., **KNOWS** of the "code of silence." (Exhibit 3). Further, he was influenced by the "consistency" of defendants' testimony so as to highlight it in his medical report. (Exhibit 3) This consistency is a demonstration of one of the many ways how the "code of silence" plays out.

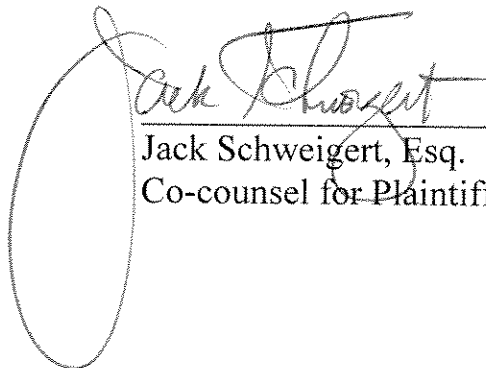
Evidence of the "code of silence" is needed in this case because the jury should be made aware that some police officers are known to cover up for the wrongdoings of their fellow officers. It is important that jurors know what the "code of silence" is for it will help them to understand why so many officers can say the same thing and still be speaking an untruth. In that regard, this case will present the testimony of Ms. Coloyan who will say she did not consent to the search of her house. Pitted against

her testimony will be the police officers whose testimony will all be the same, that she did consent. By understanding the "code of silence" the jurors will be in a better position to evaluate credibility of witnesses.

CONCLUSION

Based on the foregoing, Defendants *motion in limine* precluding retired Police Chief Donohue's testimony and/or any testimony regarding a "code of silence" must be DENIED for it would impermissibly encroach on the Plaintiff's constitutional right to cross examine witnesses and due process of law to adequately present her case to the jury.

DATED: Honolulu, Hawaii; February 28, 2006.



Jack Schweigert, Esq.
Co-counsel for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

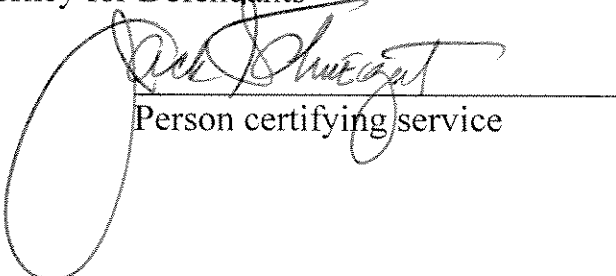
OFELIA COLOYAN,)	CIV. NO. 03-476 KSC
)	
Plaintiff,)	
vs.)	CERTIFICATE OF SERVICE
)	
WILLIAM BADUA,)	
JEFFERY OMAI,)	
SPENCER ANDERSON,)	
NEIL PANG,)	
and DOES 5-10;)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The below-signed hereby certifies that on February 28, 2006 one copy of the attached document was served on the below individual by hand delivery at the address indicated below:

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Attorney for Defendants


Person certifying service